

ASSEMBLY BILL

No. 2353

Introduced by Assembly Member Knight

February 24, 2012

An act to amend Section 4107 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2353, as introduced, Knight. Public contracts: subcontracting: substituting.

The Subletting and Subcontracting Fair Practices Act generally prohibits a prime contractor whose bid is accepted by an awarding authority from substituting a person as subcontractor in place of the subcontractor listed in the original bid, except that the awarding authority may consent to the substitution of another person as a subcontractor in specified situations. Existing law requires the awarding authority, or its duly authorized officer, prior to approval of the prime contractor's request for the substitution, to give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for the request.

This bill would require the awarding authority, or its duly authorized officer, to give that written notice within 5 working days of receiving notice from the prime contractor.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 4107 of the Public Contract Code is amended to read:

4107. A prime contractor whose bid is accepted may not:

(a) (1) Substitute a person as subcontractor in place of the subcontractor listed in the original bid, except that the awarding authority, or its duly authorized officer, may, except as otherwise provided in Section 4107.5, consent to the substitution of another person as a subcontractor in any of the following situations:

(1)

(A) When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when that written contract, based upon the general terms, conditions, plans, and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.

(2)

(B) When the listed subcontractor becomes insolvent or the subject of an order for relief in bankruptcy.

(3)

(C) When the listed subcontractor fails or refuses to perform his or her subcontract.

(4)

(D) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in Section 4108.

(5)

(E) When the prime contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions set forth in Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.

(6)

(F) When the listed subcontractor is not licensed pursuant to the ~~Contractors~~ *Contractors' State License Law*.

(7)

1 (G) When the awarding authority, or its duly authorized officer,
2 determines that the work performed by the listed subcontractor is
3 substantially unsatisfactory and not in substantial accordance with
4 the plans and specifications, or that the subcontractor is
5 substantially delaying or disrupting the progress of the work.

6 ~~(8)~~

7 (H) When the listed subcontractor is ineligible to work on a
8 public works project pursuant to Section 1777.1 or 1777.7 of the
9 Labor Code.

10 ~~(9)~~

11 (I) When the awarding authority determines that a listed
12 subcontractor is not a responsible contractor.

13 (2) Prior to approval of the prime contractor's request for the
14 substitution, the awarding authority, or its duly authorized officer,
15 shall give notice in writing to the listed subcontractor *within five*
16 *working days of receiving notice from the prime contractor* of the
17 prime contractor's request to substitute and of the reasons for the
18 request. The notice shall be served by certified or registered mail
19 to the last known address of the subcontractor. The listed
20 subcontractor who has been so notified has five working days
21 within which to submit written objections to the substitution to
22 the awarding authority. Failure to file these written objections
23 constitutes the listed subcontractor's consent to the substitution.

24 (3) If written objections are filed, the awarding authority shall
25 give notice in writing of at least five working days to the listed
26 subcontractor of a hearing by the awarding authority on the prime
27 contractor's request for substitution.

28 (b) Permit a subcontract to be voluntarily assigned or transferred
29 or allow it to be performed by anyone other than the original
30 subcontractor listed in the original bid, without the consent of the
31 awarding authority, or its duly authorized officer.

32 (c) Other than in the performance of "change orders" causing
33 changes or deviations from the original contract, sublet or
34 subcontract any portion of the work in excess of one-half of 1
35 percent of the prime contractor's total bid as to which his or her
36 original bid did not designate a subcontractor.